S.B.CIVIL WRIT PETITION NO.7189/2006

Duncan Macneill Mines & Granites Limited
v.
State of Rajasthan & Anr.

Date of Order :: 17th August, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. L.R.Mehta ]
Mr. R.K.Purohit] for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate.
Mr. P.S.Bhati, for the applicants.

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By Government of Rajasthan a working permission was given to the Rajasthan State Mineral Development Corporation (hereinafter referred to as "the Corporation") for the mining operations in mining plots No.7, 8, 9, 17, 18, 25, 26 and 33 in village Parbati and the Corporation entered into an agreement with co-promoters of the petitioner company, consequent thereto, possession of the mining area relating to delineated plots No.17, 18, 25, 26 and 33 was given to the petitioner company. The agreement aforesaid was ratified by the State Government on 1.5.1985.

A decision was taken by the Government of Rajasthan to grant mining leases directly to the promoters including to the petitioner who were already working in the mining area concerned in pursuant to their agreement with the Corporation. To implement the

decision aforesaid, a relaxation under the Rajasthan Minor Mineral Concession Rules, 1986 was also made as desired by the Mining Engineer, Rajsamand. The petitioner company submitted an application for allotment of mining leases to plots No.25, 26 and 33, however, these applications came to be rejected on 29.9.1995. The working permission given to the Corporation was also cancelled by the State Government on 4.11.1995. Relevant to note that the applications of similar nature submitted by certain other co-promoters of the Corporation were also rejected and such rejection was subject matter of judicial proceedings those ultimately culminated into a settlement before Hon'ble Supreme Court in SLAs(C) No.22656-22658/1997.

No agreement could have been arrived in case of the petitioner as the writ petition preferred on its behalf was pending before this Court and that was disposed of on 21.4.2000 in following terms:-

> "Learned counsel Mr. Mehta for the petitioner produces on record a Photostat copy of the order passed by the Hon'ble Supreme Court of India on 16.11.99 passed in Special Leave to Appeal (Civil) No.22656-22658/1997 and submits that suitable order be passed in the matter. From the order passed by the Hon'ble Supreme Court, the parties settled the disputes in those three cases and exchanged the consent terms

between them and the parties were agreeable to abide by the consent terms set out in the letter dated 22.10.99 signed by the Deputy Secretary to the Government of Rajasthan. Approval letters on behalf of all the three petitioners were also taken on record and it was agreed that the necessary leases agreements will be executed on or before 28.2.2000 in favour of the parties to those S.L.Ps. Accordingly, all those S.L.Ps. Were disposed of in terms of the consent terms filed on record.

There would not have been any difficulty in disposing of this petition in terms of the aforesaid order passed by the Hon'ble Supreme Court provided three was a settlement arrived at between the parties in the instant case. In this case, there is no such settlement. It was submitted by Learned AAG Mr. Jangid that the present petitioner may also make similar representation before State Government and the same will be considered and decided in accordance with law.

Under the circumstances, the petitioner is directed to make a proper representation before the State Government within one month from today. On receiving the same, the State Government shall decide it as early as possible preferably within four months from the receipt thereof.

Till then, then interim order, if any, granted earlier to continue.

With these observations and directions, this petition stands disposed of."

The representation submitted by the petitioner in pursuant to the direction above was not decided by the respondent Mining Department, hence an another writ petition (SBCWP No.3902/2005) was preferred by the petitioner and this Court while disposing of that writ petition on 7.7.2005 directed the State Government to decide the representation of the petitioner within a period of two months from the date of receipt of a copy of the order passed by the Court. Despite the order aforesaid, no action was taken, therefore, the petitioner approached this Court again by way of filing writ petition wherein on 16.10.2006 and 22.11.2006 following orders were passed:-

"16.10.2006

Twice this court has said to have directed to State Government to decide the representation of the petitioner. It is submitted by the learned counsel for the petitioner that representation has yet not been decided by the State Government. Therefore, a direction may further be issued to the Government to decide the representation of the petitioner. Accordingly, the respondent-Government authority concerned is directed to decide the representation of the petitioner within four weeks from today and in case the same

is not decided, the concerned authority will make itself present in the court on 20.11.2006 with the reasons for non-compliance of the orders of this Court. On that day, it will also show as to why up till now they have not decided the representation despite the earlier orders of this Court. In case the representation of the petitioner is decided, then, there is no need to appear the concerned authority in person. Put up on 20.11.2006."

22.11.2006

Heard.
Admittedly, the orders of this Court dated 16.10.06 have not been complied with by the respondents State Officials. Before any stringent order is made against the officials of the State, learned Government Advocate is granted one week's time to apprise the Court of the circumstances under which the orders aforesaid have not been complied with. Apart from decision on the representation, the direction was made for the personal presence of the official concerned, in case of non-compliance, that too have gone unheeded. This requires a serious view to be taken in the matter.

Put up on 29.11.2006."

The respondents thereafter on 24.11.2006 decided the representation submitted on behalf of the petitioner in following terms:-

> "उपरोक्त विषय में आपके द्वारा प्रेषित प्रतिवेदन दिनांक 13.7.2005 का परीक्षण एवं विवेचन करने पर यह पाया गया कि आपके द्वारा आवेदित क्षेत्र से बिलानाम भूमि न्यूनतम आवश्यक मात्रा से कम है, इसलिए खनिज अनुदान हेतु स्वीकृत किये जाने के योग्य नहीं है। राज्य सरकार ने आपका प्रतिवेदन अस्वीकार करने का निर्णय लिया है।"

Being aggrieved by the same, this petition for writ is preferred.

While challenging the decision of the respondents the argument advanced is that the impugned decision, that was not taken for more than six years under one pretext or the other, was taken by the respondents hurriedly in simple manner of rejection due to the orders passed by the Court on 16.10.2006 and 22.11.2006. It is stated that the decision taken is not at all objective and is also not supported by any reason.

Though a reply to the writ petition has been filed but it is not in dispute that the respondent State rejected the representation submitted by the petitioner without considering the contentions raised by the petitioner in the representations submitted on 10.5.2000 (Anx.3), 28.10.2001 (Anx.4), 1.10.2003 (Anx.5), 9.3.2004 (Anx.6), 28.4.2004 (Anx.7) 24.5.2004

(Anx.8), 28.6.2004 (Anx.9) and 13.7.2007 and so on, as well as the notice for demand of justice given by the petitioner on 2.12.2005 (Anx.14).

The decision of the State Government as communicated to the petitioner under the letter dated 24.11.2006 does not speak as to how the State considered contentions of the petitioner raised in various representations, however, it certainly convey the hurried procedure adopted in rejecting claim of the petitioner. The manner in which the State Government has dealt with the issue, that was to be settled by it in pursuant to the directions given by this Court vide order dated 21.4.2000, establishes it well that no objective consideration of facts was made. An opportunity of hearing should have been given to the petitioner by the State Government and it must have dealt with all the contentions raised by the petitioner in its representation. The Government was having all power to take a decision but whatever decision taken should have been supported by adequate reasons to establish its objectivity. It is well settled that no one can explain what he did simply by saying the particular action appealed to him; thus he must indicate what it was about action or decision that appealed. The reasons are always necessary to resolve conflicts and uncertainty. These are the reasons those, rationalise action, the making of decision is a product of reasons and it is essential

for a decision maker to disclose all factors those were foundation for the decision taken.

With consent of the parties, for the reasons mentioned above, this petition for writ is disposed of at admission stage with a direction to the State Government to decide all the representations submitted by the petitioner, reference of those are given in preceding paras, by a speaking and reasoned order. The State Government shall also give an opportunity of personal hearing to the authorised representative of the petitioner company. The disposal of the representations submitted by the petitioner is required to be made on or before 26.10.2007.

In view of earlier conduct of the respondents the respondents are directed to submit a compliance report of this order to this Court on or before 14.11.2007.

The applications preferred by certain persons to become party to the proceedings by claiming themselves to be khatedars of the land are not required to be decided in proceedings of this petition for writ as I have not adjudicated substantial and subjective rights of the parties said to be involved in present matter.

( GOVIND MATHUR ),J.

Kkm/ps.